HON'BLE Dr. JUSTICE G. YETHIRAJULU

W.P.Nos.25320 and 26360 of 1999

Dated this the 12th day of December, 2007

W.P.No.25320 of 1999:

Between:

D. Durga Reddy … Petitioner

AND

The Defence Estate Officer, A.P. Circle,
at Secunderabad and another
… Respondent

W.P.No.26360 of 1999:

Between:

N. Sudarshan Reddy
and 5 others … Petitioner
AND

The Defence Estate Officer,
A.P. Circle at Secunderabad
and another … Respondents

HON'BLE Dr. JUSTICE G. YETHIRAJULU

Writ Petition Nos.25320 of 1999
and 26360 of 1999

COMMON ORDER:

These Writ Petitions have been filed by the petitioners challenging the proceedings, dated 14.09.1999 in case No.21/188/EV/Sy.No.525/B.No.178/VII/I/VI/III/1998 initiated by the first respondent under the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971
(for short 'the Act') in respect of the land in Survey No.102 at

Bowenpally village, Trimulgerry Mandal, Hyderabad District as illegal and otherwise than in due process of law.

2) The learned counsel for the respondents submitted that a notice has been issued to the petitioners to show cause as to why the structures situated at the disputed property shall not be demolished. The petitioners instead of giving explanation and getting an order on merits approached this Court through these writ petitions challenging the jurisdiction of the first respondent in giving show cause notice under the provisions of the Act. It is further contention of the respondents that under Section 5-B of the Act, the Defence Estate Officer authorized to order of demolition of unauthorized constructions in the public premises and if any such order has been passed by the first respondent on merits after giving opportunity to both parties, an appeal lies to the Chief Judge, City Civil Court, Hyderabad under Section 9 of the Act and without exhausting those remedies, the writ petitioners directly approached this Court. Therefore, the writ petitions cannot be maintained. It is also contended by the respondents counsel that the property has been included in the G.L.R., which is a clear indication that it is a public property. Therefore, the Defence Estate Officer was right in issuing the show cause notice and there is no illegality in issuing the said notice.

3) The learned counsel for the petitioners contended that the property was a private property and there were many transactions of change of title from person to person and the property was originally purchased in a court of auction held on 27.06.1925 and the predecessors of the petitioners were in possession and enjoyment of the property with absolute rights. He further submitted that the mere entry in the G.L.R. itself does not confer any title on the Contonenment Board, therefore, credence can be given to the entry in the G.L.R. and the title of the petitioners and their possession cannot be disturbed. It is also contended on behalf of the petitioners that the impugned

proceedings cannot be initiated under the provisions of the Act unless there is sufficient material to show that it is the public premises.

4) In the light of the above contentions, I am made to understand that there is a dispute regarding the title over the property. Whether it is a private property or a public property for which an enquiry is contemplated under the Act itself. Therefore, it is essential to direct the Defence Estate Officer to make a detailed enquiry after giving opportunity to both parties and to pass an order with sufficient reasons whether it is the property of the Cantonment or a private property comes within the definition of public premises. In the light of the above circumstances, I am inclined to dismiss the writ petition with some directions to the first respondent in this regard.

5) In the result, both the writ petitions are disposed of directing the petitioners to file explanation to show cause notice issued by the first respondent within four weeks from the date of this order and on filing of such explanation, the Defence Estate Officer shall conduct an enquiry after giving opportunity to both parties to put forward their oral and documentary evidence in support of their contentions and to pass appropriate orders on merits and communicate the same to the parties. The *status quo* as on today shall be maintained till the disposal of the proceedings pending before the first respondent-Defence Estate Officer. No order as to costs.

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Dr. G. YETHIRAJULU, J

Date: 12—12--2007
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